

SECOND LOAN AGREEMENT

THIS SECOND LOAN AGREEMENT ("Second Loan Agreement" or "Agreement"), dated as of June 22, 2009, is made by and between the Lafayette Redevelopment Agency (the "Agency") and the Lafayette Library and Learning Center Foundation (the "Foundation") in light of the following recitals. The Agency and the Foundation are sometimes collectively referred to in this Agreement as "Parties" and individual referred to as "Party".

RECITALS

WHEREAS, the Agency is a duly constituted redevelopment agency under the laws of the State of California and pursuant to such laws has duly proceeded with the redevelopment of its Lafayette Redevelopment Project Area (the "Project Area");

WHEREAS, the Redevelopment Plan for said Project Area provides for tax increment financing in accordance with the provisions of Chapter 6, Part 1 of Division 24 of the Health and Safety Code of the State of California and Section 16 of Article XVI of the Constitution of the State of California;

WHEREAS, in furtherance of the Redevelopment Plan for the Project Area, and after complying with the requirements of Health & Safety Code Sections 33445 and 33679, the Agency previously entered into that certain Loan Agreement with the Agency Foundation, dated May 12, 2008 (the "Loan Agreement") to assist in financing the Lafayette Library and Learning Center (the "Project") by borrowing \$9,000,000 from the Foundation under the Loan Agreement to be used by the Agency to pay for a portion of the cost of the Project (the "First Loan");

WHEREAS, the Agency has now determined that it requires an additional \$2.5 million in additional funding for construction of the Project;

WHEREAS, in furtherance of the Redevelopment Plan for the Project Area, and after complying with the requirements of Health & Safety Code Sections 33445 and 33679, the Agency has determined to assist in financing the Project by borrowing \$2.5 million from the Foundation under this Second Loan Agreement to be used by the Agency to pay for a portion of the cost of the Project (the "Second Loan"); and

WHEREAS, Health and Safety Code Section 33132 and 33600 authorizes the Agency to borrow or accept financial assistance for the agency's activities, powers, and duties.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

Section 1. Incorporation of Recitals. The recitals, including the defined terms, set forth above, are hereby restated and incorporated in this Second Loan Agreement as if restated in full.

Section 2. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Second Loan Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned, have the meanings herein specified

"Agency" means the Lafayette Redevelopment Agency, a redevelopment agency and public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California.

"Bonds" means all tax allocation bonds or other evidences of indebtedness outstanding as of the date hereof or issued in the future by the Agency and secured by Tax Increment Revenues which are sold to parties other than the City or any subordinate agency of the City or the Foundation.

"City" means the City of Lafayette, a California municipal corporation.

"Foundation" means the Lafayette Library and Learning Center Foundation, a non-profit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

"Foundation Repayment Bonds for the Second Loan" means Bonds anticipated to be issued by the Agency ~~during calendar year 2012~~ for the purpose of, among other things, repaying the Second Loan.

"Law" means the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State of California and the acts amendatory thereof and in supplement thereto. Whenever reference is made in this Second Loan Agreement to the Law, reference is made to the law as in force on the date of the execution of this Second Loan Agreement, unless the context otherwise requires.

"Project" has the meaning set forth in the Recitals.

"Project Area" has the meaning set forth in the Recitals.

"Tax Increment Revenues" means all taxes allocated to, and paid into a special fund of the Agency for the Project Area pursuant to Article 6 of Chapter 6 of the Law and Section 16 of Article XVI of the Constitution of the State of California, and as provided in the redevelopment plan for the Project Area, including all payments and reimbursements, if any, to the Agency specifically attributable to *ad valorem* taxes lost by reason of tax exemptions and tax rate limitations; excluding amounts required to be deposited in the Agency's low and moderate income housing fund pursuant to the Law.

Section 3. Loan. The Foundation hereby agrees to lend to the Agency the amount of two million five hundred thousand dollars (\$2,500,000), which it shall convey to Agency on July 1, 2009 (the "Second Loan"). The Agency agrees to use the Second Loan to pay

the construction costs for the Project as they become due and agrees that such amounts will be used to cover a portion of the total construction cost of the Project and for no other purpose.

Section 4. Source of Repayment; Subordination to Bond. The Agency agrees to make all loan payments hereunder from Tax Increment Revenues or any other source of legally available funds. Agency's obligations under this Second Loan Agreement are subordinate and junior to any Bonds and shall also be subordinate and junior to other indebtedness or form of obligation incurred prior to the effective date of this Second Loan Agreement. The Agency hereby pledges and grants a security interest in the Tax Increment Revenues to the Foundation as security for the loan payments; provided, that such pledge and security interest shall be at all times subordinate to the obligation of the Agency to pay debt service on all Bonds. The Foundation agrees that, in the event the Agency does not have sufficient funds after payment of debt service on Bonds to repay the Second Loan, the shortfall, to the extent that it is accrued interest, shall be treated as additional advances hereunder which increase the outstanding loan balance and the Agency shall not be declared in default hereunder. Notwithstanding any default by the Agency hereunder, under no circumstances shall the amounts due to the Foundation hereunder be subject to acceleration.

Section 5. Modification of First Loan; Amendment of Loan Agreement. The parties agree that the Loan Agreement shall be modified to increase the interest rate of the First Loan to 6.5% as of July 1, 2009, as long as the Second Loan remains outstanding.

Section 6. Loan Repayment, Interest Rate. The Agency and the Foundation agree that the outstanding Second Loan balance will accrue interest, compounded annually, or a fraction thereof, at the commercially reasonable rate of 8% per annum commencing on July 1, 2009 until Agency issues and receives the proceeds for the Foundation Repayment Bonds for the Second Loan, or otherwise until the balance of the Second Loan is fully repaid. Any accrued and unpaid interest as of June 30th of each year shall be added to the principal balance of the Second Loan as of that date. The Agency agrees that it will repay the Second Loan and accrued interest as follows:

(a) Upon issuance of the Foundation Repayment Bonds for the Second Loan, and receipt of the proceeds therefrom, the Agency shall re-pay the Foundation the full amount of the Second Loan, and all interest accrued thereon to such date, in one payment.

(b) With the Foundation's consent, which will not be unreasonably withheld, the Agency at any time may elect to prepay all or any portion of the outstanding Second Loan balance prior to the issuance of the Foundation Repayment Bonds for the Second Loan without penalty from any source of legally available funds. The Agency shall pay interest accrued on the outstanding Second Loan through the date of payoff.

~~(c) If the Agency has legally available funds that are not committed to the repayment of Bonds and other indebtedness or form of obligation incurred prior to the effective date of this Second Loan Agreement, it shall repay the Second Loan and all interest accrued thereon in full by December 1, 2012 unless an alternative agreement is reached with the~~

Foundation.

Section 7. Use of Loan Repayments. The Foundation shall use all loan repayments, which shall include the interest and principal payment amounts in accordance with the Lafayette Library and Learning Center usage-use and funding agreements previously adopted by the City, Agency and Foundation.

Section 8. Amendments. This Second Loan Agreement may be amended from time to time by the parties hereto for any purpose by an instrument in writing signed by a duly authorized representative of the Agency and the Foundation. These amendments may allow for the Foundation to sell some or all of the loan to third parties or for the repayment schedule to be adjusted if mutually approved by the Parties. Both the Agency and the Foundation shall cooperate with one another to approve amendments that are not harmful to either party, which amendments shall be approved by a majority of the Board of Trustees in the case of the Foundation. No amendment shall conflict with any covenants of the Agency made to owners of Bonds issued prior to such Amendment.

Section 9. Representations and Warranties of the Foundation.

The Foundation hereby makes the following representations and warranties to the Agency:

(a) The Foundation is a duly organized and existing non-profit public benefit corporation under the laws of the State of California, has full legal power and authority to enter into this Second Loan Agreement and has duly authorized the execution and delivery of this Second Loan Agreement in accordance with its Bylaws and Articles of Incorporation.

(b) To the extent that the funds used by the Foundation to make the loan hereunder have been obtained from gifts, donations, grants or bequests, the use of such funds for such purpose is not inconsistent with the terms of any such gifts, donations, grants or bequests.

(c) The Foundation is wholly independent of, and is not controlled, either indirectly or directly by, the City or the Agency. This Second Loan Agreement is made as an arm's length transaction.

(d) The making of the loan and the execution and delivery of this Second Loan Agreement will not constitute a breach or default of any other obligation of the Foundation pursuant to any contract, agreement, indenture, mortgage, deed of trust or any other instrument.

Section 10. Representations and Warranties of the Agency. The Agency hereby makes the following representations and warranties to the Foundation:

(a) The Agency is a duly organized and existing agency of the State of California under the Law, has full legal power and authority to enter into this Second Loan

Agreement and has duly authorized and approved the execution and delivery of this Second Loan Agreement and the performance of the Agency's obligations hereunder.

(b) The Agency will apply the proceeds of the loan hereunder solely to the cost of the Project and will not use such proceeds in a way such that, under the laws in existence as of the date hereof, the interest payable on the Foundation Repayment Bonds for the Second Loan would not be excludable from gross income for federal and State of California income tax purposes.

(c) The Agency reasonably expects that it will have sufficient funds to pay all payments to the Foundation hereunder when due.

(d) The Agency is wholly independent of, and is not controlled by and does not control, either indirectly or directly, the Foundation. This Second Loan Agreement is made as an arm's length transaction.

(e) The execution and delivery by the Agency of this Second Loan Agreement, the making of the loan, the performance of the Agency's obligations hereunder and the consummation of the transactions contemplated hereby will not result in the violation of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Agency is bound and will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Agency is a party or by which it is bound or to which any of its properties or assets is subject.

(f) No consent, approval, authorization or other order of any governmental authority or other third-party is required to be obtained by the Agency in connection with the authorization, execution and delivery of this Second Loan Agreement or with the authorization and making of the loan or the performance of the Agency's obligations hereunder.

Section 11. Notices. Whenever it shall be necessary for either Party to serve notice on the other regarding this Agreement, such notice shall be served either in person, by certified mail, return receipt requested to the addresses below.

Agency: City of Lafayette Redevelopment Agency
3675 Mt. Diablo Blvd., # 210
Lafayette, California 94549
Attn: Executive Director

Foundation: Lafayette Library and Learning Center Foundation
P.O. Box 1472
Lafayette, California 94549
Attn: Treasurer

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

Section 12. Legal Costs. In the event of any legal action between the Agency and the Foundation arising out of the obligations of the Parties pursuant to this Agreement, the prevailing Party will be entitled to payment of its costs and expenses, including its attorneys' fees.

Section 13. Binding Effect; Successors. The Foundation shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Agency, which may be given in the Agency's sole and absolute discretion, but shall not be unreasonably withheld. Any attempt to do so in violation of this provision shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns and all of the Parties hereto shall be jointly and severally liable hereunder.

Section 14. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument which shall be binding upon the Parties notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart.

Section 12. Further Assurances. Whenever requested to do so by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, release, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to complete anything contemplated by this Agreement. In addition, each Party shall do any other acts and execute, acknowledge, and deliver any requested documents in order to carry out the intent and purpose of this Agreement.

Section 14. Modifications. All modifications to this Agreement must be in writing and signed by the Parties, and shall be follow the requirements for amendments set forth in Section 8 of this Agreement.

Section 15. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any person, other than the Parties and their respective successors and assigns.

Section 16. Governing Law; Choice of Venue. This Agreement shall be governed and construed in accordance with California law. Venue shall be Contra Costa County.

Section 17. Severability. If any provision of this Agreement becomes or is declared by a court to be illegal, unenforceable or void, that clause will be omitted and the remainder of the Agreement will continue in full force and effect. Such holding shall in no way affect the validity or enforceability of this Agreement.

Section 18. Entire Agreement. This Agreement constitutes the entire agreement between the Agency and the Foundation concerning the matters described herein and supersedes any and all other agreements, contracts, covenants, resolutions or other arrangements with respect to the subject matter hereof.

IN WITNESS HEREOF, the parties hereto have executed this Second Loan Agreement as of the day and year first above written.

LAFAYETTE LIBRARY AND LEARNING CENTER FOUNDATION

By: _____
[Title]

LAFAYETTE REDEVELOPMENT AGENCY

By: _____
Executive Director